

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHELLE CLOUTIER, :
 :
 Plaintiff, :
 :
 v. : CIVIL NO. 3:02cv616 (AHN)
 :
GORDON ENGLAND,¹ :
SECRETARY OF THE NAVY, :
 :
 Defendant. :

RULING ON DEFENDANT'S PARTIAL MOTION TO DISMISS

Plaintiff Michelle Cloutier has brought suit against Defendant Gordon England, Secretary of the Navy, for allegedly discriminating and retaliating against her in violation of Title VII of the Civil Rights Act. She seeks reinstatement, back pay, front pay, compensatory damages, and attorney's fees. Defendant has filed a Motion to Dismiss several paragraphs of the Plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) [doc. # 23] for failing to exhaust her administrative remedies. For the reasons discussed below, the motion is DENIED.

¹ Gordon R. England has succeeded the previously named defendant, Robert B. Pirie, Jr., as U.S. Secretary of the Navy. As per Fed. R. Civ. P. 25(d)(1), the court directs the Clerk to update the caption in the court's records accordingly.

BACKGROUND

According to her Complaint, Plaintiff encountered difficulties during her employment as a computer scientist at the Naval Undersea Warfare Center ("NUWC") in New London, Connecticut. Her grievances are recounted in ¶¶ 15-43 of the Complaint:

- (1) Due to her sex, Plaintiff was assigned to a "life cycle manager position" without a pay upgrade in 1988. (Complaint, ¶¶ 15-16)
- (2) Due to her sex, Plaintiff was discouraged from applying for a promotion in 1989. (Complaint, ¶¶ 22-28)
- (3) Due to her sex, Defendant failed to pay Plaintiff a higher salary during a 120-day detail in 1990. (Complaint, ¶¶ 29-32)
- (4) Due to her sex, Plaintiff was not selected when she applied for a Reassignment Opportunity ("R.O.") 33(1) to an interdisciplinary position in Norfolk, Virginia, in November 1992. (Complaint, ¶¶ 34-43)

Before initiating this litigation, Plaintiff filed a formal administrative complaint in 1993 with the NUWC's Deputy Equal Employment Opportunity ("EEO"). Plaintiff had not

retained counsel at this point. This administrative complaint included the following statements:

Over the last five years, I have worked in the operational systems project office in two successive jobs that were filled previously by a man, at GS-14 level. I have been consistently mislead about my chances for promotion during that time. Several males who started working in this project office at the same time I did, or more recently [than] I did, have been promoted, or are in the queue for promotion to GS-14 level

I want compensation for the more than five years I have remained at GS-13 level while working at 14 level. I want my responsibilities and accomplishments acknowledged by promotion.

Upon receiving this complaint, the EEO officer acknowledged Plaintiff's administrative complaint in writing and characterized her complaint as follows:

- a. on the basis of sex you were not selected for a reassignment opportunity, R.O. 33(1), which had a closing date of 4 December 1992.

McDaniel Decl. at ¶ 2. The EEO officer made no mention of the pre-1992 grievances. This acknowledgment further stated that "[i]f you believe that the issue in your complaint is not

correctly identified, please notify me, in writing, within seven calendar days after your receipt of this letter, specifying why you believe that the issue is not correctly identified." McDaniel Decl. at ¶ 3.

STANDARD OF REVIEW

In deciding a motion to dismiss under Rule 12(b)(6), a court is required to accept as true all factual allegations in the complaint and must construe all well-pleaded factual allegations in the plaintiff's favor. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1992). A court may dismiss a complaint, or portions thereof, only where "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 43, 45-46 (1957); see also Still v. Debuono, 101 F.3d 888, 891 (2d Cir. 1996). The issue on a motion to dismiss "is not whether the plaintiff will prevail, but whether he is entitled to offer evidence to support his claims." United States v. Yale New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 236).

Finally, it is established law that "the failure to exhaust administrative remedies is a precondition to bringing

a Title VII claim in federal court." Francis v. City of New York, 235 F.3d 763, 768 (2d Cir. 2000) (internal quotation marks and citations omitted).

DISCUSSION

Defendant contends that dismissal of ¶¶ 15-32 from the Complaint is warranted because Plaintiff has failed to exhaust her grievances through the administrative complaint system at NUWC. More specifically, although Defendant concedes that Plaintiff gave proper notice of being illegally denied the R.O. 33(1) job position in 1992, Defendant maintains that her administrative complaint failed to raise the sex discrimination claims which allegedly occurred between 1988-1990.

In light of established Second Circuit case law, however, the court rejects these arguments. The court further finds that Plaintiff has adequately exhausted her remedies, and that the administrative complaint provides sufficient notice of the allegedly discriminatory acts which occurred between 1988-1990.

I. Exhaustion of Remedies

A plaintiff may bring an employment discrimination action under Title VII only after filing a timely charge with the EEOC or with "[the] agency with authority to grant or seek relief from such practice." 42 U.S.C. § 2000e-5(e). Exhaustion of remedies is a precondition to suit, Francis, 235 F.3d at 768, and a plaintiff typically may raise in a district court complaint only those claims that either were included in or are "reasonably related to" the allegations contained in the EEOC charge. Butts v. City of New York Dep't of Hous. Pres. & Dev., 990 F.2d 1397, 1401 (2d Cir. 1993) (internal quotation marks omitted).

The Second Circuit has recognized that one class of "reasonably related" claims for purposes of Title VII exhaustion doctrine is "essentially an allowance of loose pleading" because "EEOC charges frequently are filled out by employees without the benefit of counsel and that their primary purposes is to alert the EEOC to the discrimination that a plaintiff claims she is suffering." Id. at 1402. As a result, the Second Circuit has "allowed claims not raised in the [EEOC] charge to be brought in a civil action where the conduct complained of would fall within the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." Id.

II. Analysis

The court finds that Plaintiff gave Defendant adequate notice of the 1988-1990 sex discrimination allegations which appear in ¶¶ 15-32 of the Complaint. In her administrative complaint, which was dated August 30, 1993, Plaintiff explicitly stated that she had been passed over and misled since 1988 about promotions which ultimately went to men. She also stated therein that she was compensated at a GS-13 level for doing GS-14 work. All of these statements appearing in the administrative complaint are consistent with the allegations found in ¶¶ 15-32 of the Complaint.

The EEO officer's misapprehension of the plain language of her administrative complaint does not operate to vitiate the adequacy of the notice of the 1988-1990 allegations. The court further finds that Plaintiff's decision not to respond in writing to Defendant's request for clarification does not alter the sufficiency of this notice.² Notably, Defendant has provided no authority for this novel theory.

Moreover, even assuming the validity of Defendant's theory that the administrative complaint did not give adequate notice of the 1988-1990 allegations, the 1988-1990 allegations

² In her opposition papers, Plaintiff claims that after receiving the EEO manager's letter, she did speak with him by telephone to clarify the scope of her grievances.

would constitute claims that are "reasonably related" to the claim of R.O. 33(1). As stated above, Defendant does not dispute that Plaintiff has provided sufficient notice of the alleged denial of the R.O. 33(1) position. Thus, the court alternatively finds that the 1988-1990 allegations in the Complaint "can reasonably be expected to grow out of the charge of discrimination" alleged by the denial of the R.O. 33(1) opportunity. Butts, 990 F.3d at 1402.³ Accordingly, the court concludes that Plaintiff has adequately exhausted her administrative remedies.

³ In a one-sentence footnote, Defendant states that Plaintiff's 1988-1990 claims would be time-barred because they did not fall within the 45-day window for raising discrimination complaints. However, Plaintiff's allegations, if proven, could constitute a "continuing violation" under Title VII and would not be foreclosed by the 45-day bar. See Cornwell v. Robinson, 23 F.3d 694, 704 (2d Cir. 1994).

CONCLUSION

For the reasons discussed above, Defendant's Partial Motion to Dismiss [Doc. #23] is DENIED.

SO ORDERED this ____ day of July, 2003, at Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge